

PUBLIC SERVICE COMMISSION STATE OF MONTANA

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February 21, 2002

William Caton
Acting Secretary
Federal Communications Commission
455 12th Street, SW Portals II Building
Washington DC 20544

**Re: Telecommunications Carriers' Use of Customer Proprietary Network Information
and Other Customer Information (CC Docket Nos. 96-115 and 96-149)**

Dear Mr. Caton:

The Montana Public Service Commission strongly supports the adoption of an opt-in Customer Proprietary Network Information ("CPNI") requirement, which would require carriers to seek express customer approval prior to the release of personal data collected as CPNI.

Article II, Section 10 of the Montana Constitution contains an express right to privacy, and that right has been consistently interpreted by Montana Courts as affording Montana citizens a greater right to privacy than that afforded by the Federal Constitution.

Recent attempts to implement an opt-out policy in Montana raise issues regarding Montana citizens' right to privacy. The Commission notes the following concerns regarding an opt-out policy:

- (a) Customers will have limited opportunities to exercise their opt-out option, and it is not clear how the rights of new customers coming into Montana or how a carrier's past customers who have switched services will be protected.
- (b) Customers are not provided clear warnings alerting them to the nature and seriousness of the information that is to be shared, and it is not clear precisely what will be shared and with whom.

Given Montana's strong interest in consumer privacy, the Montana Commission urges the FCC to re-adopt an "opt-in" CPNI dissemination policy. If the FCC should adopt an "opt-out" policy, the FCC should not prohibit states from adopting regulations that go beyond any national regulations, in light of the strong state interest in consumer privacy. The FCC should examine CPNI rules on a case-by-case basis, giving deference to the states, some of which have enhanced constitutional rights to privacy, and which also have greater experience balancing public policy issues on a local level.

If the FCC chooses to implement an opt-out provision, then "information" in 47 U.S.C. § 272 should be defined to include CPNI.

Sincerely,



Jay Stovall, Vice Chairman

JS:MT:rs